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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

915-006.054

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on August 5, 2008

Signature

Typed or printed name Kathleen Sipos

Application Number

10/512,101

Filed

Oct. 21, 2004

First Named Inventor

Michael ROOKE

Art Unit

2617

Examiner

J. HOLLIDAY

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

 attorney or agent of record.

Registration number _____

 attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 58,051

Signature

Keith R. Obert

Typed or printed name

203-261-1234

Telephone number

August 5, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Attorney Docket No. 915-006.054
Serial No. 10/512,101

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:

Michael ROOKE : Confirmation No.: **6418**
Application Serial No.: 10/512,101 : Group/Art Unit: **2617**
Filing Date: October 21, 2004 : Examiner: **J. HOLLIDAY**

Title: METHOD AND DEVICE FOR DELIVERING MESSAGES TO MOBILE TERMINAL DEVICES IN ACCORDANCE WITH A USER SELECTABLE ATTAINABILITY STATUS

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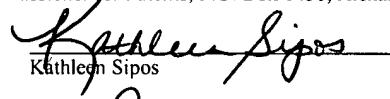
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the final Office Action of February 6, 2008, please reconsider the rejections in view of the following remarks:

CERTIFICATE OF MAILING

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Kathleen Sipos
Dated: August 5, 2008

REMARKS

Claims 1, 3-12 and 15-19 were examined by the Office, and in the final Office Action of February 6, 2008 all claims are rejected. With this response no claims are amended. Applicant respectfully submits that the Office has committed clear error in rejecting the claims, because the cited references fail to disclose or suggest all of the limitations recited in the claims. Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejections in view of the following discussion.

This response is submitted along with a Notice of Appeal

Claim Rejections Under § 103

In section 3, on page 3 of the Office Action claims 1, 3-12 and 15-19 are rejected under 35 U.S.C. § 103(a) as anticipated by Salin et al. (U.S. Patent No. 6,370,390) in view of Rooke et al. (U.S. Appl. Publ. No. 2002/0044634). Applicant respectfully submit that the cited references, alone or in combination, fail to disclose or suggest independent claim 1. Claim 1 recites receiving a status change notification message from the presence service about the mobile terminal device having a change of availability information, and initiating a delivery attempt of the message in part when the change of availability information indicates that the mobile terminal device will accept the message. Applicant respectfully submits that the cited references, alone or in combination, at least fail to disclose or suggest these limitations recited in claim 1.

The method of claim 1 initiates a delivery attempt of a message that has been unsuccessfully delivered in response to a notification about the attainability of a mobile terminal device, and a status change notification message about a change of the availability information when the change of the availability information indicates that the mobile terminal will accept the message. Claim 1 clarifies that both the attainability and availability of the mobile terminal device are monitored in order to determine whether the mobile terminal device will accept a message. For example, claim 1 specifically recites subscribing to a presence service for receipt of notifications about the attainability of the mobile terminal device, and checking availability information of the mobile terminal device in the presence service for an indication of whether the mobile terminal device will accept the message. Furthermore, claim 1 indicates that availability information is related to the type of message, size of the message, etc. Therefore, it is clear from the limitations of claim 1 that claim 1 addresses two different types of information, attainability and availability. Accordingly,

claim 1 recites that the delivery attempt is initiated when a notification about the attainability of the mobile device, and a status change notification message about a change in availability information are received if the change of availability information indicates that the mobile terminal device will accept the message. The cited references, alone or in combination, at least fail to disclose or suggest this limitation as recited in claim 1. Therefore, for at least this reason the Office has committed clear error in rejecting claim 1.

On page 2 of the Office Action, the Office states that Salin discloses alerting the SMS-GMSC when the mobile station is against reachable, and this teaching corresponds to receiving status change notification message about the mobile terminal device having a change in availability information, as recited in claim 1. The Office also acknowledges on page 2 of the Office Action that Salin does not disclose availability information as recited in claim 1, and relies upon Rooke for this teaching. However, on page 5 of the Office Action, the Office acknowledges that Salin fails to disclose that the message is forwarded when specific availability information indicates that the mobile station will accept the message. Therefore, the Office has acknowledged that Salin does not disclose initiating a delivery attempt when the received status change notification message indicates that the mobile terminal device will accept the message. Instead, the discussion of Salin on page 2 of the Office Action is limited to whether the mobile station is reachable, i.e. information related to the attainability of the mobile terminal, and not the availability. While the Office has acknowledged that this is the case, the Office has incorrectly modified the teachings of Salin with those of Rooke to also include availability information as recited in claim 1. As discussed above, it is not just that claim 1 recites receiving availability information, but claim 1 also recites initiating the delivery attempt when notifications about the attainability of the mobile terminal and the status change notification message are received. Therefore, in claim 1 the delivery attempt requires both the notification about attainability and the status change notification message.

However, Rooke does not disclose or suggest receiving a status change notification, and then initiating a delivery attempt when the status change notification of the availability information indicates that the mobile terminal device will accept the message, as recited in claim 1. Instead, in Rooke the decision whether to store, forward or delete a message is based upon terminal capabilities and the current user profile stored in a multimedia messaging service center. See Rooke column 4, lines 31-34. In contrast to claim 1, initiation of the delivery attempt is not based on a status change notification, but instead delivery attempts only occur in Rooke when a message is sent. While the

user profile can be updated, the updating of the user profile does not result in the delivery of a message that was previously chosen by the user to be rejected. See Rooke column 4, lines 39-42. Therefore, Rooke fails to make up for the deficiencies in the teachings of Salin, and for at least that reason, claim 1 is not disclosed or suggested by the cited references.

Furthermore, on page 6 of the Office Action, the Office asserts that the motivation to combine the cited references would be to allow a MMSC to decide how a message should be handled before sending it as taught by Rooke in order to reduce signaling when short messages are sent. However, claim 1 does recite to deciding how to handle messages, but instead is related to when delivery of messages is initiated. The cited references do not disclose or suggest initiating delivery of messages under the circumstances recited in claim 1. Therefore, it is irrelevant whether Rooke discloses determining how to handle a message based on whether a mobile terminal device will or will not accept the message, because claim 1 recites initiating the delivery attempt when a status change notification indicates that the mobile terminal device will accept the message. Rooke does not disclose initiating a delivery attempt when availability information is updated, but instead only occur when the message is actually sent. When the message is sent in Rooke the decision whether to store, forward or delete the message is made, but Rooke does not disclose forwarding the message if the user profile is updated. In contrast, claim 1 specifically recites that the delivery attempt is initiated when the change of availability information indicates that the mobile terminal will accept the message. Furthermore, this delivery attempt is only initiated if a notification about the attainability of the mobile terminal device is also received. Therefore, the cited references, alone or in combination, fail to disclose or suggest initiating a delivery attempt upon receipt of both notifications about attainability and status change notification message indicating that the mobile terminal device will accept the message, as recited in claim 1.

Independent claims 12, 17 and 19 contain limitations similar to those recited in independent claim 1. Therefore, for at least the reasons discussed above in relation to claim 1, claims 12, 17 and 19 are not disclosed or suggested by the cited references.

The dependent claims depending directly or indirectly from the above mentioned independent claim, and are not disclosed or suggested by the cited references at least in view of their dependencies. Therefore, applicant respectfully request withdrawal of the rejections to the dependent claims.

Conclusion

For at least the foregoing reasons, applicant respectfully submits that the present application is in condition for allowance, and such action is earnestly solicited. The undersigned hereby authorizes the Commissioner to charge Deposit Account No. 23-0442 for any fee deficiency required to submit this response.

Respectfully submitted,

Date: 5 Aug 7 2007


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